

**RESTATED AND AMENDED
OWNER PARTICIPATION AGREEMENT**

by and between the

**City of Upland,
a California municipal corporation,**

and

Park Place Ford LLC, dba Ford of Upland

**RESTATED AND AMENDED
OWNER PARTICIPATION AGREEMENT**

THIS RESTATED AND AMENDED OWNER PARTICIPATION AGREEMENT (the "Restated Agreement") is dated for reference purposes as of the 14th day of September, 2015, and is being entered into by and between the CITY OF UPLAND, a California municipal corporation ("CITY"), and Park Place Ford LLC, a California Limited Liability Company, dba Ford of Upland ("OWNER"). CITY and OWNER are sometimes hereinafter referred to individually as a "Party" and collectively as the "Parties." The Parties enter into this Agreement with reference to the following recited facts (each a "Recital"):

RECITALS

A. OWNER is in escrow to become the owner of certain property in the City more specifically described in Attachment 1. In addition, the Metropolitan Water District ("MWD") is the owner of certain real property more specifically described in Attachment 1. OWNER has or immediately upon execution of this Agreement will enter into a lease agreement with the MWD for the use of MWD's property described in Attachment 1.

B. OWNER desires to open and operate a dealership on the Property, as that term is defined in Section 102.15, selling new and used vehicles and other directly related services (the "Dealership"). The term "Dealership" is further defined in Section 102 below.

C. The conversion of the formerly vacant Property to sales tax generating uses will provide substantial financial benefits to the CITY.

D. In order to enhance the viability of the Property for vehicle sales and servicing, it will be necessary for OWNER to invest substantial sums into the improvement of the Property.

E. In consideration of OWNER's commitment to utilize the Property for sales tax generating uses and the substantial financial commitments that OWNER will incur to improve the Property, the CITY is willing to make certain payments set forth in this Agreement, and subject to the terms and conditions contained herein.

F. On or about August 11, 2014 an Owner Participation Agreement ("Agreement") for the same purpose as stated herein and the parties now desire to restate and amend said agreement with revised terms contained herein.

COVENANTS:

BASED ON THE FOREGOING RECITALS, WHICH ARE INCORPORATED INTO THIS RESTATED AGREEMENT BY THIS REFERENCE, AND FOR GOOD AND VALUABLE CONSIDERATION AND THE PROMISES AND COVENANTS OF THE PARTIES SET FORTH IN THIS RESTATED AGREEMENT, CITY AND OWNER AGREE AS FOLLOWS:

(§ 100) PURPOSE AND DEFINITIONS

(§101) Purpose of the Restated Agreement.

This Restated Agreement is intended to encourage the use and improvement of the Property and its surrounding neighborhoods by providing for OWNER's relocation to and improvement of the OWNER'S business operations thereon. OWNER's performance of its obligations as set forth in this Restated Agreement are in the vital and best interests of the CITY, the welfare of its residents, and are in accordance with the public purposes and provisions of applicable federal, state, and local laws and requirements.

(§102) Definitions

The following terms as used in this Restated Agreement shall have the meanings given unless expressly provided to the contrary:

1. The term “**Annual Payment Amount**” shall have the meaning ascribed in Section 301.4(a).
2. The term “**CITY**” shall mean the City of Upland, a municipal corporation, located at 460 North Euclid Avenue, Upland, California 91786. The term “CITY” as used herein also includes any assignee of, or successor to, the rights, powers, and responsibilities of the CITY.
3. The term “**City Financial Assistance**” shall have the meaning ascribed in Section 301.
4. The term “**City Portion of Sales Tax Revenues from the Property**” shall have the meaning ascribed in Section 301.4(d).
5. The term “**Commencement Date**” shall have the meaning ascribed in Section 301.1
6. The term “**Covenant Termination Date**” shall have the meaning ascribed in Section 401.
7. The term “**Dealership**” shall mean the vehicle dealership owned and operated by Owner, which will occupy the Property for the primary purpose of selling vehicles and not for storage. At least 50% of the vehicles sold on and from the Property during a Payment Period shall be new.
8. The term “**Effective Date**” shall mean the date this Restated Agreement is executed by both parties after approval by the Upland City Council at a public meeting as required by law.
9. The term “**Maximum Payment Amount**” shall mean the maximum amount that CITY will be required to pay OWNER, including all payments made from CITY to OWNER under this Restated Agreement, which is Two Million One Hundred Thousand Dollars (**\$2,100,000**).
10. The term “**MWD**” shall mean Metropolitan Water District or its successor in interest.

11. The term "**OWNER**" shall mean Park Place Ford LLC, dba Ford of Upland. The term "OWNER" as used herein also includes any permitted assignee of or successor to a possessory interest in the Property, as provided in Section 713.

12. The term "**Payment Date**" shall have the meaning ascribed in Section 301.4(b).

13. The term "**Payment Period**" shall mean a twelve-month calendar period commencing on the first day of the next full calendar year following the Commencement Date January 1, 2017 and each consecutive twelve-month calendar period thereafter until the CITY's Financial Assistance obligation is met or this Restated Agreement is terminated as provided herein, whichever occurs first.

14. The term "**Point of Sale**" shall mean the location which is treated by the California Franchise Tax Board as the location where a sale is made for purposes of the Sales Tax Laws.

15. The term "**Project**" shall mean the improvement of the Property by OWNER as described in Attachment No. 2 to this Restated Agreement, and as otherwise provided in Section 200 of this Restated Agreement, including the plans and permits to be approved pursuant hereto. In the event of any inconsistency between the narrative description of the Project in this Restated Agreement and the plans and permits approved by the CITY, the approved plans and permits shall govern.

16. The term "**Property**" shall mean those certain parcels of real property more particularly described and depicted in Attachment No. 1 to this Restated Agreement. In the event OWNER desires to expand the Dealership onto any adjoining real property, acquired by lease or purchase and not described herein; or in the event OWNER, pursuant to the construction of the Project, merges, subdivides, adjusts, or otherwise alters the boundaries of the property described in Attachment 1; or should OWNER acquire real property in addition to or less than the property OWNER has committed to acquiring herein, OWNER shall immediately deliver to CITY an accurate updated legal description

of the real property underlying the Project and upon CITY's approval of such change this Restated Agreement shall be amended to incorporate the updated legal descriptions as Attachment 1, which updated description shall thereafter mean the "Property" for purposes of this Restated Agreement.

17. The term "**Release of Construction Covenants**" shall have the meaning ascribed in Section 212 of this Restated Agreement. The form of the Release of Construction Covenants shall be as set forth in Attachment No. 3 to this Restated Agreement.

18. The term "**Sales Tax Law**" shall have the meaning ascribed in Section 301.4(d).

19. The term "**Sales Tax Revenue Reports**" shall have the meaning ascribed in Section 302.

20. The term "**Sales Tax Revenues from the Property**" shall have the meaning ascribed in Section 301.4(d).

21. The term "**Tenants**" shall refer to the Dealership and all other tenants located on the Property.

(§200) CONTROL OF THE PROPERTY AND DEVELOPMENT OF THE PROJECT

(§201) Control of the Property.

OWNER hereby represents to CITY that it is in escrow to purchase the portions of the Property identified as APN 1044-151-04, 1044-111-09, or portions thereof, in fee simple. OWNER further represents that Owner will enter into a lease agreement with MWD to lease the portion of the Property identified as APN 1044-151-02 ("Lease"). Owner further covenants and represents that, OWNER will acquire the right to construct the Project on the Property. Owner's acquisition of the right to complete the Project on the Property by purchase or lease, investment of a minimum of four million dollars (\$4,000,000) in the Project and the completed construction of the Project on the Property are conditions precedent to CITY's obligation to make any payments under this Restated Agreement. Prior to the commencement of construction of the Project, OWNER shall provide

documentation evidencing OWNER'S right and ability to make the Project Improvements on the Property in accordance with the attached Schedule of Performance.

(§202) Scope of Development; Construction Covenants.

The Project shall consist of the completion of all the Project improvements described in Attachment No. 2 to this Restated Agreement in accordance with the terms of this Section 200, and as otherwise provided in this Restated Agreement. The construction of the Project shall be in accordance with the plans and permits to be approved by CITY pursuant to this Restated Agreement or under the requirements of law, except as such plans and permits may be changed in accordance with this Restated Agreement. In the event of any inconsistency between the narrative description of the Project in this Restated Agreement and the plans and permits approved by the CITY, the approved plans and permits shall govern.

OWNER commits to investing a minimum of four million dollars (\$4,000,000) in development of the improvements to the Property and shall develop the Project in strict conformity with the permits and approvals referenced in Sections 203-205 of this Restated Agreement. If OWNER desires to make any change in any previously approved development or building plans, OWNER shall submit the proposed change to the appropriate body for approval. OWNER shall be responsible for all construction and installation and for obtaining all the necessary permits.

(§203) Land Use Approvals.

On or before November 30, 2015, OWNER shall prepare and submit to CITY a complete application for the required land use approvals for the Project and shall pay the applicable fees for CITY's review and approval. OWNER shall exercise its reasonable diligence to expeditiously pursue such land use approvals. CITY shall assist OWNER with the application; provided, however, that nothing herein shall be construed as a commitment

by CITY that the land use approvals will be approved by CITY or as a limitation on CITY's legislative discretion.

(§204) Final Building Plans.

Within thirty (30) days following final approval of the land use approvals by the City and the expiration of all administrative and legal appeals, OWNER shall submit to CITY a complete set of Final Building Plans for the Project and pay the applicable fees to CITY for CITY's review and approval. The Final Building Plans shall be in strict conformity with the previously approved land use approvals and shall contain all information required to obtain all necessary building permits required for the Project. OWNER shall exercise its reasonable diligence to expeditiously obtain CITY's approval of said Final Building Plans. If the Final Building Plans are acceptable to CITY and meet applicable code requirements, CITY staff shall provide reasonable assistance to OWNER in obtaining the necessary approvals; provided, however, that CITY does not warrant or represent that approval shall be forthcoming. If the CITY rejects the Final Building Plans as not in conformity, OWNER shall modify and resubmit the Final Building Plans and CITY approval prior to the issuance of building permits for the Project. In the event City requires modifications or changes to the Final Building Plans, OWNER shall make the necessary changes with reasonable diligence and resubmit to CITY.

(§205) Other City and Governmental Permits.

Before commencement of construction of the Project, OWNER, at its own expense, shall secure or cause to be secured any and all building and other permits and other approvals which may be required from all governmental agencies having jurisdiction over the Property and the Project ("Government Permits").

Notwithstanding any other provision of this Restated Agreement, CITY's obligations hereunder shall be contingent and conditional upon OWNER submitting and processing, and the governing authorities of CITY approving, as necessary, all documentation and

information required to construct the Project, including but not limited to the California Environmental Quality Act (Division 13 (commencing with Section 21000) of the California Public Resources Code). OWNER shall comply with all environmental mitigation measures imposed as conditions of approval on the Project. Nothing herein is intended nor shall be construed as a pre-commitment or prejudgment by CITY regarding the matters required to be considered as part of the environmental review for the Project or relating to approval of the Project in general. If the CITY's governing authorities disapprove the Project on environmental grounds, or impose environmental mitigation conditions which OWNER reasonably determines renders performance hereunder impracticable or economically infeasible, either CITY or OWNER may terminate this Restated Agreement by delivery of written notice to the other party. In the event of a termination for such cause, neither party shall have any further rights against or obligations to the other party hereunder.

(§206) Cost of Development.

Except as expressly provided in Article III of this Restated Agreement, OWNER shall be responsible for all costs of developing the Project, including but not limited to pre-development costs incurred for items such as planning, design, engineering, and environmental remediation; all development and building fees; any cost incurred to demolish and clear any and all existing improvements, furnishings, fixtures, and equipment from the Property as necessary to complete the Project; costs for insurance and bonds (as required); costs for financing; all on-site and off-site construction costs; costs for extending or relocating utility services; costs incurred for construction, installation, repair, or replacement of improvements within the public rights-of-way around the Property; costs for required landscaping (if any); and any development impact fees and other applicable CITY or other fees.

(§207) Schedule of Performance- Progress Reports.

Within thirty (30) days of the final approval of the Final Building Plans and all other required City and Government Permits, OWNER shall commence construction. Once construction is commenced, it shall be continuously and diligently pursued to completion, except when due to causes beyond the control and without the fault of OWNER, as set

forth in Section 703 of this Restated Agreement. During the course of construction, and prior to CITY's issuance of its Release of Construction Covenants for the Project, OWNER shall keep CITY informed of the progress of construction on a monthly basis, which progress reports shall be in writing and submitted to the Development Services Director upon either party's request.

(§208) Compliance with Permits and Laws; Prevailing Wages

OWNER shall plan, design, and carry out the development of the Project in conformity with all applicable laws, regulations, and rules of the City and other governmental agencies having jurisdiction, including without limitation all conditions and requirements of the permits and approvals to be approved by the CITY as set forth in Sections 202-205 herein. Nothing in this Restated Agreement is intended to limit or restrict OWNER's right to challenge the validity of any such laws, regulations, or rules, or the applicability of such laws, regulations, or rules to OWNER, the Project, or the Property.

With respect to the development and construction activities undertaken by OWNER on the Property pursuant to this Restated Agreement, OWNER asserts that it is aware of the requirements of Labor Code Section 1720 et seq., concerning the payment of prevailing wages. OWNER acknowledges that OWNER shall be independently responsible for reviewing and understanding the applicable law and regulations with respect to the payment of prevailing wages, and complying therewith. In addition to any other OWNER indemnifications of CITY set forth in this Restated Agreement, OWNER shall indemnify, defend, and hold CITY, its officers, officials, employees, agents and volunteers harmless from and against any claims, injury, liability, loss, damage, cost or expenses (including reasonable attorneys' fees, expert witness fees, and court costs) arising from, or which are in any way related to, the failure of OWNER, its officers, employees, agents, volunteers, contractors or subcontractors, to pay prevailing wages if legally required or otherwise to comply with applicable law.

(§209) Indemnification for Construction Activities.

To the fullest extent permitted by law, excepting only as expressly provided in Section 210, OWNER agrees to and shall indemnify, defend, and hold harmless CITY, its

officers, officials, employees, and agents (collectively, the "Indemnatee") from and against any and all claim, liability, loss, damage, costs, and expenses (including attorney's fees and court costs) arising from or as a result of the death or injury of any person or any accident, injury, loss, or damage whatsoever (whether or not covered by insurance) caused to any person or to the property of any person which shall occur on or adjacent to the Property and which shall be caused by any acts done thereon or any errors or omissions of OWNER or any of its officers, agents, servants, employees, contractors or subcontractors in developing the Project, regardless of whether the Indemnatee is guilty of any active or passive negligence.

(§210) Rights of Access.

For the purpose of assuring compliance with this Restated Agreement, representatives of CITY shall have the reasonable right of access to the Property, without charges or fees, at normal construction hours during the period of construction for the purposes of this Restated Agreement, including but not limited to the inspection of the work being performed by OWNER in constructing the Project. Such representatives of CITY shall be those who are so identified in writing by the City Manager of CITY. CITY shall indemnify, defend, and hold harmless OWNER and their respective officers, employees, and agents from any damage caused or liability arising out of its exercise of this right of access; provided, however, that it is understood that CITY does not by this Section waive any defense or immunity from suit that it would have in the absence of this Restated Agreement, nor does CITY assume any responsibility or liability for a negligent inspection or failure to inspect or for a failure to enforce compliance with any applicable law.

(§211) Estoppels.

At the request of OWNER or any holder of a mortgage or deed of trust, CITY shall, from time to time and upon the request of such holder, timely execute and deliver to OWNER or such holder a written statement of CITY that no default or breach exists (or would exist with the passage of time, or giving of notice, or both) by OWNER under this Restated Agreement, if such be the case, and certifying as to whether or not OWNER has at the date of such certification complied with any obligation of OWNER hereunder as to

which such holder may inquire. The form of any estoppel letter shall be prepared by the holder or OWNER and shall be at no cost to CITY; OWNER shall reimburse CITY for any costs incurred in connection therewith, including CITY's legal expenses, upon submission to OWNER of an invoice therefore by CITY.

(§212) Release of Construction Covenants.

Upon the satisfactory completion of construction of the Project, CITY shall furnish OWNER with a final release of the construction covenants set forth in this Article II in the form of the Release of Construction Covenants attached hereto as Attachment No. 3, upon written request therefore by OWNER. Such Release of Construction Covenants shall be in a form so as to permit recordation in the Office of the Recorder of the County of San Bernardino.

The Release of Construction Covenants shall be, and shall so state, a conclusive determination of satisfactory completion of OWNER's development obligations under this Restated Agreement, and of full compliance with the terms of this Restated Agreement relating to construction of the Project on the Property. However, parties acquiring interests in the Property shall be bound by the following: (i) the indemnity obligations referred to in Section 209, and (ii) the obligations set forth in Article III that are a prerequisite to CITY's payment of the CITY Financial Assistance, and (iii) any other obligation of Owner under this Restated Agreement, all of which shall survive issuance of the Release of Construction Covenants. CITY shall not unreasonably withhold or delay issuance of the Release of Construction Covenants. If CITY refuses or fails to furnish the Release of Construction Covenants after written request from OWNER, CITY shall, within ten (10) business days after such written request, provide OWNER with a written statement of the reasons CITY refused or failed to furnish the Release of Construction Covenants. The statement shall also contain CITY's opinion of the action OWNER must take to obtain the Release of Construction Covenants. If the reason for such refusal is confined to the immediate availability of specific items or materials for landscaping, CITY will issue its Release of Construction Covenants upon the posting of a cash deposit by OWNER with CITY in an amount representing the fair value of the work not yet completed.

The Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of OWNER to any holder of a mortgage or any insurer of a mortgage on or with respect to the Property. The Release of Construction Covenants is not a notice of completion as referred to in California Civil Code Section 3093.

III. (§300) CITY FINANCIAL ASSISTANCE

(§301) City Financial Assistance.

In consideration for OWNER's undertakings to pursuant to this Restated Agreement, CITY shall periodically pay to OWNER the amounts set forth herein (the "**City Financial Assistance**").

1. Notwithstanding any other provision set forth in this Restated Agreement to the contrary, CITY's obligation to make periodic City Financial Assistance payments to OWNER shall be conditioned and contingent upon OWNER's satisfaction of all of the following requirements (with the understanding that the requirements in clauses (i), (ii) and (iii) shall be satisfied as a condition to CITY's initial obligation to start making any City Financial Assistance payments hereunder, and the requirements in clauses (iv), (v) and (vi) shall be satisfied during and with respect to each Payment Period as a condition to CITY's obligation to make City Financial Assistance payments with respect to that particular Payment Period): (i) OWNER shall have timely acquired the right to complete the Project on the Property by lease or purchase; (ii) OWNER shall have timely completed construction of the Project in accordance with all requirements of this Restated Agreement and obtained the Release of Construction Covenants as required in Section 212; (iii) OWNER shall have delivered to CITY the executed and recordable Memorandum of Restated Agreement pursuant to Section 407 herein; (iv) OWNER shall have remitted to the State Board of Equalization, and CITY shall have received and have the legal right under state law to control, the City Portion of Sales Tax Revenues from the Property for the Payment Period in question; (v) OWNER shall have delivered to CITY the Sales Tax Revenue Reports required pursuant to Section 302, and any other reasonably required information requested by CITY, to enable CITY to verify the amount of the

Annual Payment Amount for each applicable Payment Period; and (vi) OWNER shall not be in material default of any of its obligations hereunder at the time payments become due. The date on which conditions (i)-(ii) in the preceding sentence are first met is the "**Commencement Date.**"

Notwithstanding anything stated herein to the contrary, if the Project is not fully completed, and the Commencement Date has not been fully established, on or before January 1, 2017, this Restated Agreement shall be terminated and CITY shall have no obligation to provide any Financial Assistance to OWNER.

2. The City Financial Assistance shall be payable from any source of funds legally available to CITY. In this regard, it is understood and agreed that the City Portion of Sales Tax Revenues from the Property is being used merely as a measure of the amount of City Financial Assistance payments that are periodically owing by CITY to OWNER and that CITY does not and legally cannot pledge any portion of the actual City Portion of Sales Tax Revenues from the Property to OWNER.
3. The City Financial Assistance shall be paid to OWNER annually until the Maximum Payment Amount is reached or this Restated Agreement is otherwise terminated as provided in Section 304.
4. CITY shall pay the City Financial Assistance to OWNER based upon the City Portion of Sales Tax Revenues from the Property in the following amounts and in the following manner:
 - a. For each of the Payment Periods, CITY shall utilize the City Portion of Sales Tax Revenues from the Property to calculate an annual payment amount (or in the case of the first and the last Payment Periods, a prorated payment amount) that CITY will be required to pay to OWNER (the "**Annual Payment Amount**"). For each Payment Period for which CITY is required to make a City Financial Assistance payment to OWNER under this Restated Agreement, the Annual Payment Amount shall be calculated in accordance with the following formula:
 1. 0% of all City Portion of Sales Tax Revenue up to \$312,000.
 2. 75% of City Portion of Sales Tax Revenue in excess of \$312,000.

For example, if the City Portion of Sales Tax Revenues from the Property for a Payment Period is \$700,000, the Annual Payment Amount for that Payment Period shall be \$291,000: Seventy Five percent (75%) of Three Hundred and Eighty Eight Thousand (\$388,000) (Amount in excess of \$312,000), which is equal to Two Hundred and Ninety One Thousand dollars (\$291,000).

The OWNER covenants to operate the Dealership for a minimum of five (5) years ("Five Year Covenant"), as defined in § 401 herein, after CITY has satisfied the Maximum Payment Amount . **Escrow:** To provide assurance for the aforementioned Five Year Covenant, from each Annual Payment to OWNER, fifteen percent (15%) of such payment shall be deducted and held in an interest bearing escrow account. Said deductions shall remain in said account for a period of five (5) years ("Escrow Period") after the Maximum Payment Amount has been satisfied by CITY. If the Dealership is operational upon the expiration of the Escrow Period, the escrow funds shall be paid to OWNER. However, if this Agreement is terminated early for cause or the Dealership should cease operation prior to the expiration of the aforementioned Escrow Period, the funds held in escrow shall be returned to CITY.

Notwithstanding anything stated herein to the contrary, the maximum amount CITY will be required to pay OWNER, including all payments made from CITY to OWNER under this Restated Agreement, is Two Million One Hundred Thousand Dollars **\$2,100,000**. Once the Maximum Payment Amount has been paid by CITY, all further payment obligations to OWNER under this Restated Agreement will cease.

The City Portion of Sales Tax Revenues from the Property attributable to a particular Payment Period shall be determined based on all taxable sales

occurring from the Property (including all Tenants) during that Payment Period, not on the date that the City Portion of Sales Tax Revenues from the Property are ultimately remitted to the CITY. Thus, for example, if during the first Payment Period the Property generates taxable sales transactions that ultimately generate \$320,000 of revenues that meet the definition of "City Portion of Sales Tax Revenues from the Property," the entire \$320,000 of such revenues shall be considered as attributable to the first Payment Period and the Annual Payment Amount to OWNER for the first Payment Period shall be \$6,000.

Each year there shall be a reconciliation of the City Portion of Sales Tax Revenues from the Property pursuant to the terms of Section 303 of this Restated Agreement.

- b. Notwithstanding the foregoing, it is understood and agreed that no payment shall be owing to OWNER until the CITY is able to verify that the full amount of the City Portion of Sales Tax Revenues from the Property asserted by OWNER has in fact been received by CITY. In addition, the Annual Payment Amount shall not be calculated or be due and payable by CITY to OWNER until the entire Payment Period has ended and the OWNER has delivered to CITY the annual Sales Tax Revenue Report covering the entire Payment Period, as required by Section 302. CITY shall pay OWNER the entire Annual Payment Amount for each Payment Period no later than the earlier of the following dates (each, a "Payment Date"): (i) six (6) months after the end of the applicable Payment Period; or (ii) following delivery to CITY of OWNER's Sales Tax Revenue Report for the applicable Payment Period, thirty (30) days after the date on which CITY receives information from the State Board of Equalization and the CITY's auditor sufficient to enable CITY to determine the exact amount of the Annual Payment Amount owing to OWNER for that Payment Period. If CITY has insufficient information by the applicable Payment Date to

determine the exact Annual Payment Amount owing to OWNER for that Payment Period within six (6) months after the end of the applicable payment period, CITY shall make the payment at that time based on the best information then available to CITY, subject to the adjustment process provided for in Section 303 when additional information becomes available.

- c. Each payment to OWNER shall be accompanied by a written statement itemizing how the Annual Payment Amount (or any adjustment to the initial payment, if applicable), was calculated.
 - d. As used herein, the term "**Sales Tax Revenues from the Property**" shall mean the total of all sales tax revenues paid by, on behalf of, or to the Owner or Tenants on the Property, pursuant to the Bradley-Burns Uniform Sales and Use Tax Law (Revenue and Taxation Code Section 7200, et seq.) (the "**Sales Tax Law**"), as the Sales Tax Law may be amended from time to time, where the Property is the point of sale. The "**City Portion of Sales Tax Revenues from the Property**" shall mean the net percentage of Sales Tax Revenues from the Property ultimately remitted by the State Board of Equalization to CITY, the disposition of which is controlled by CITY under state law, which amount, for purposes of this Restated Agreement, shall never exceed a maximum of one percent (1%) of the combined total taxable sales revenues generated by all Tenants from the Property. For purposes of this Restated Agreement, the City Portion of Sales Tax Revenues from the Property shall not be considered to have been received by CITY until CITY is able to confirm CITY's receipt of such revenues from the State Board of Equalization. In this regard, CITY covenants to promptly take any and all actions reasonably necessary to verify CITY's receipt of the City Portion of Sales Tax Revenues from the Property.
5. Notwithstanding the definition of the "City Portion of Sales Tax Revenues from the Property" set forth above, in the event that the Sales Tax Law is amended after the Effective Date of this Restated Agreement and the result is a reduction

in the amount of the City Portion of Sales Tax Revenues from the Property that would have been received by the CITY and calculated under this Restated Agreement pursuant to the law currently in effect, the term "City Portion of Sales Tax Revenues from the Property" also shall be deemed to include any identifiable replacement funds under the Sales Tax Law as so amended which CITY receives in lieu of the revenues that are so reduced. For example, if the Sales Tax Law is hereafter amended in a manner such that sales tax revenues from the sale of vehicles become distributed to cities in whole or in part on the basis of population (or some criterion or combination of criteria other than the point-of-sale) and the result in Upland is that the CITY receives the same amount of sales tax revenues CITY-wide as it would have received had there been no such change in the Sales Tax Law, there shall be no reduction in the City Portion of Sales Tax Revenues from the Property for purposes of calculating the amount of City Financial Assistance payments to OWNER hereunder. Using the same example of a change in the Sales Tax Law, if the result in Upland is that the CITY receives ten percent (10%) less sales tax revenues CITY-wide as it would have received had there been no such change in the Sales Tax Law, there shall be a corresponding reduction in the City Portion of Sales Tax Revenues from the Property for purposes of calculating the amount of City Financial Assistance payments (i.e. the Annual Payment Amount) due to OWNER hereunder. Using another example, if the Sales Tax Law is hereafter amended in a manner such that CITY receives less sales tax revenues CITY-wide as it would have received had there been no such change in the Sales Tax Law but such loss in revenue is offset by another change in law that increases the amount of revenues received by CITY from other sources that would not have been received under the law currently in effect, and provided that there is a traceable nexus between the two changes in law, the calculation of the City Portion of Sales Tax Revenues from the Property shall be made by calculating the net percentage change in both categories of revenues received by CITY.

In the event of any such change in law such as projected in the above-stated examples and the data is not available to CITY that is needed to calculate the precise amount of either (i) the City Portion of Sales Tax Revenues from the Property that would have been received by CITY and calculated under this Restated Agreement pursuant to the law currently in effect or (ii) the amount of the replacement funds received by CITY under the law as so amended in lieu of the revenues that would have been received had there been no such change in law, CITY and OWNER shall meet and confer in good faith and exercise reasonable diligence to estimate such amount(s) based upon the best information that is then available.

In addition to the foregoing, CITY and OWNER agree that in the event that California law is amended after the Effective Date of this Restated Agreement, and the result is a reduction in the amount of the City Portion of Sales Tax Revenues from the Property that would have been received by CITY under the law currently in effect, and an appropriate adjustment in the definition of such terms cannot be made in accordance with the preceding two paragraphs, CITY shall enter into good faith negotiations with OWNER to determine if, based upon such amended law, an amendment to this Restated Agreement can be effectuated to preserve the interests of the parties. If following such good faith negotiations CITY determines an amendment cannot be agreed upon between the parties, the amount owed by CITY for each Payment Period will be reduced to same degree as the City Portion of Sales Tax Revenues from the Property is reduced as a result of the amendment in California law.

(§302) Sales Tax Revenue Reports.

On or before thirty (30) days after the end of each calendar quarter during the Payment Period, OWNER shall submit to CITY a copy or copies of all statements and quarterly reports OWNER and Tenants are required to file and have filed with the State Board of Equalization to support OWNER's calculation of Sales Tax Revenues from the Property for said Payment Period (herein, collectively, the "**Sales Tax Revenue**

Reports”); provided, that to the extent any such report contains confidential business information or confidential customer information that is not needed by CITY to calculate or verify the City Portion of Sales Tax Revenues from the Property for the applicable Payment Period, OWNER and Tenants shall have the right to redact such information from the copy of the report(s) delivered to CITY.

(§303) Adjustments to Annual Payment Amounts.

If after CITY makes a payment to OWNER hereunder CITY determines that it has overpaid OWNER and that an adjustment to a prior payment amount is warranted, CITY shall have the right to provide a written notice to OWNER itemizing the information supporting the adjustment and either (1) requiring OWNER to pay the amount of the overpayment within thirty (30) days from the date such notice is delivered or (2) deduct the amount of the overpayment from the next Annual Payment Amount otherwise owing to OWNER. The Parties shall cooperate with one another and share such information as may be reasonably required to ensure that any required adjustments (either an additional payment to OWNER or a refund or credit to CITY) can be promptly made.

(§304) Termination of City Financial Assistance.

CITY's obligation to pay the City Financial Assistance to OWNER shall terminate upon the occurrence of any of the following, whichever is first to occur:

(i) In the event the Project has not been completed according to the requirements of this Restated Agreement, and the Commencement Date has not been fully established in accordance with Section 301.1 by January 1, 2017;

(ii) The date upon which the total cumulative amount of all City Financial Assistance provided by CITY to OWNER shall equal Two Million One Hundred Thousand Dollars \$2,100,000 (“the Maximum Payment Amount”), taking into account all payments made by CITY to OWNER under this Restated Agreement;

(iii) The discontinuation of the Dealership use at and from the Property (and CITY's payment in full of all amounts accrued and owing with respect to all of the full and partial Payment Periods prior to such event or occurrence); or

(iv) The date on which OWNER defaults in complying with any material provision of this Restated Agreement, including but not limited to a default in any of the use restrictions and covenants contained in Section 401 and 402, as to which any applicable cure period referred to in Section 601 hereof has expired.

IV. (§400) USES OF THE PROPERTY; OPERATING COVENANTS

(§401) Use of the Property.

OWNER recognizes that a material consideration for CITY's entering into this Restated Agreement is to assist in the generation of additional sales and property tax revenues to CITY from the operation of a Dealership on the Property, the additional jobs anticipated to be provided by the Dealership, the increased valuation of said Property, and to assist in the development of the area and the immediate neighborhood in which the Property is located. Accordingly, OWNER covenants and agrees, which covenants shall run with the land and bind all successors, assigns, and every successor in interest of OWNER's interest in the Property, that commencing on the Commencement Date and continuing thereafter until the end of the Five Year Covenant period (see § 301 herein) ("Covenant Termination Date"), OWNER shall not use the Property for any purpose other than for the operation of the Dealership (or another vehicle, automobile, truck or motorcycle dealership preapproved by CITY in writing, whose primary purpose is the sale of new vehicles), including related incidental retail, service and repair facilities, and such other uses as may be consistent with this Restated Agreement and applicable land use regulations of CITY and pre-approved by CITY in writing. In addition, from and after the Commencement Date until the Covenant Termination Date, OWNER covenants to exercise commercially reasonable diligence to help keep the Dealership, or its approved replacement, open during normal business hours for similar

businesses, subject to temporary closures in the event of casualty losses, maintenance and repairs, and events of force majeure.

In the event that OWNER commits a material default of any of the provisions of this Restated Agreement, including but not limited to any of the use covenants or restrictions set forth in this Section 401 during the time period(s) during which such covenants and restrictions are in effect, as set forth in the preceding paragraph, and such default continues for a period of thirty (30) days after CITY has given OWNER the notice required by Section 601 in compliance with Section 601, then CITY shall have the right to terminate this Restated Agreement, in which case (a) CITY shall cooperate in causing the Memorandum of Restated Agreement to be terminated and removed of record and (b) CITY shall have no obligation to make any further City Financial Assistance payments to OWNER; and

(§402) Point-of-Sale.

Commencing on the Commencement Date and continuing until the Covenant Termination Date, OWNER shall use its best efforts to ensure that the Property, shall be the point-of-sale and lease of all new and used vehicles and other products or services (or, if CITY approves a change in dealerships, such other make of vehicles, motor homes, trailers, automobiles, trucks, motorcycles or other products or services) which are displayed, sold or leased by or through the Dealership (or its authorized replacement), any other Tenant on the Property, or any of their respective officers, officials, employees, subsidiaries or parent companies, within a fifteen (15) mile radius of the Property. OWNER shall notify Dealership and other Tenants of this requirement, and shall ensure that language is included in all Tenant agreements requiring them to comply with the requirements of this section. Failure to cure a breach of the terms and conditions of this Section 402 shall constitute a material default of this Restated Agreement.

(§403) Effect of Covenants.

CITY is deemed a beneficiary of the terms and provisions of this Restated Agreement and of the restrictions and covenants running with OWNER's fee interest in

the land as set forth in Article II and this Article IV for and in its own right and for the purposes of protecting the interests of the community and other parties, public or private, in whose favor and for whose benefit the covenants running with the land have been provided. The covenants in favor of CITY shall run without regard to whether CITY has been, remains, or is an owner of any land or interest therein in the Property or in the Project. CITY shall have the right, if any of the covenants set forth in this Restated Agreement which are provided for its benefit are breached, to exercise all rights and remedies and to maintain any actions or suits at law or in equity or other proper proceedings to enforce the curing of such breaches to which it or any other beneficiaries of such covenants may be entitled.

(§404) Memorandum of Restated Agreement

On or before the Commencement Date, and as a condition to CITY's performance of its obligations hereunder, OWNER shall deliver to CITY the fully executed and recordable Memorandum of Restated Agreement referencing the foregoing Covenants in the form set forth in Attachment No. 4 incorporated herein by this reference. CITY shall have the right to record the Memorandum of Restated Agreement. Upon the termination of this Restated Agreement, CITY shall cooperate with OWNER to record a document prepared by OWNER, at no expense to CITY, memorializing the termination of this Restated Agreement.

V. (§ 500) CREATION OF JOBS

During the term of the Agreement, Owner will increase the number of full-time employees by 45% and part-time employees by 100%. Currently, Owner employs 75 full-time employees and 4 part-time employees. By December 1, 2016, Ford of Upland is proposing to add 34 new full-time and 4 new part-time employees, totaling 117 employees. No temporary positions with Ford of Upland have been identified. Commencing with first Sales Tax revenue Report, and with each such report thereafter, required by Section 302 herein, Owner shall also provide a "Job Creation Report" on a Template to be prepared by City. The shall include, but not be limited to, the number of jobs created, full-time and part-time, whether or not they are Upland residents, etc.

VI. (§ 600) DEFAULTS, REMEDIES, AND TERMINATION

(§601) Defaults - General.

Subject to the extensions of time set forth in Section 703, failure or delay by a Party to perform any term or provision of this Restated Agreement constitutes a default under this Restated Agreement; provided, however, such Party shall not be deemed to be in default if (i) it cures, corrects, or remedies such default within thirty (30) days after receipt of a notice from the other Party specifying such failure or delay, or (ii) for defaults that cannot reasonably be cured, corrected, or remedied within such time period, if such Party commences to cure, correct, or remedy such failure or delay within such time period after receipt of a notice from the other Party specifying such failure or delay, and diligently prosecutes such cure, correction, or remedy to completion. The injured Party shall give written notice of default to the Party in default, specifying the default complained of by the injured Party. Copies of any notice of default given to OWNER shall also be given to any leasehold mortgagee requesting such notice. Except as required to protect against further damages, the injured Party may not institute proceedings against the Party in default until the time for cure, correction, or remedy of a default has expired. Except as otherwise expressly provided in this Restated Agreement, any failure or delay by a Party in giving a notice of default or in asserting any of its rights and remedies as to any default shall not constitute a waiver of any default, nor shall it change the time of default, nor shall it deprive such Party of its right to institute and maintain any actions or proceedings which it may deem necessary to protect, assert, or enforce any such rights or remedies.

(§602) Legal Actions.

Institution of Legal Actions.

In addition to any other rights or remedies, either party may institute legal action to cure, correct, or remedy any default, to recover damages for any default, or to obtain any other remedy consistent with the purposes of this Restated Agreement. Such legal actions must be instituted and maintained in the Superior Court of the County of San Bernardino, State of California, or in any other appropriate court in that county.

Applicable Law.

The laws of the State of California shall govern the interpretation and enforcement of this Restated Agreement.

Acceptance of Service of Process.

In the event that any legal action is commenced by OWNER against CITY, service of process on CITY shall be made by personal service upon the City Clerk of CITY, or in such other manner as may be provided by law. In the event that any legal action is commenced by CITY against OWNER, service of process on OWNER shall be made in any manner as may be provided by law, and shall be valid whether made within or without the State of California.

(§603) Rights and Remedies are Cumulative.

Except as otherwise expressly stated in this Restated Agreement, the rights and remedies of the Parties are cumulative, and the exercise by either Party of one or more of its rights or remedies shall not preclude the exercise by it, at the same or different times, of any other rights or remedies for the same default or any other default by the other Party. Notwithstanding any other provision set forth in this Restated Agreement to the contrary, in no event shall CITY have the right of specific performance or other mandatory injunctive relief to compel OWNER to operate the Dealership, and CITY's sole remedies for a failure to continuously operate the Dealership (or its authorized successor) from the Commencement Date until the Covenant Termination Date shall be: (i) the termination of this Restated Agreement; (ii) the prospective termination of the City Financial Assistance payments as provided in Section 401 of this Restated Agreement; and (iii) the payment of litigation expenses as provided in Section 604.

(§604) Litigation Expenses.

If either Party to this Restated Agreement is required to initiate or defend litigation in any way connected with this Restated Agreement, the prevailing Party in such litigation, in addition to any other relief which may be granted, whether legal or equitable, shall be entitled to recover its reasonable litigation expenses, including

without limitation attorney's fees, expert witness fees, and other costs incurred with respect to such litigation. If either Party to this Restated Agreement is required to initiate or defend litigation with a third party because of the violation of any term or provision of this Restated Agreement by the other Party, then the Party so litigating shall be entitled to reasonable litigation expenses from the other Party to this Restated Agreement. All such litigation expenses shall be deemed to have accrued on commencement of such action and shall be enforceable whether or not such action is prosecuted to judgment.

VII. (§700) GENERAL PROVISIONS

(§701) Notices, Demands and Communications Between the Parties.

Formal notices, demands, and communications between CITY and OWNER shall be given either by (i) personal service, (ii) delivery by reputable document delivery service such as Federal Express that provides a receipt showing date and time of delivery, or (iii) mailing in the United States mail, certified mail, postage prepaid, return receipt requested, addressed to:

To CITY:	City of Upland 8200 Upland Blvd. Upland, California 92835 Attn: City Manager Phn: 909-931-4148
With a copy to:	Jones & Mayer 3777 N. Harbor Blvd. Fullerton, California 92835 Attn: Richard L. Adams II, City Attorney Phn: 714-446-1400
To OWNER:	Park Place Ford LLC Dba Ford of Upland 555 West Foothill Blvd. Upland, CA 91786 Attn: John Engelhardt Phn: 909-946-5555

With a copy to:

The Law Office of Jason D. Annigian, APC
114 N. Indian Hill Blvd., Ste E
Claremont, CA 91711
Attn: Jason D. Annigian
Phn: 909-981-0475

Notices personally delivered or delivered by document delivery service shall be deemed effective upon receipt. Notices mailed shall be deemed effective at Noon on the second business day following deposit in the United States mail. Such written notices, demands, and communications shall be sent in the same manner to such other addresses as either Party may from time to time designate by mail.

(§702) Nonliability of City Officials and Employees; Conflicts of Interest

CITY officers, officials, employees, agents and contractors, shall not be personally liable to OWNER in the event of any default or breach by CITY or for any amount which may become due to OWNER or on any obligations under the terms of this Restated Agreement. No officer, official, employee, agent or contractor of CITY shall have any direct or indirect interest in this Restated Agreement, nor participate in any decision relating to this Restated Agreement which is prohibited by law.

(§703) Enforced Delay; Extension of Times of Performance.

In addition to specific provisions of this Restated Agreement, performance by either Party hereunder shall not be deemed to be in default where delays or defaults are due to causes beyond the control and without the fault of such Party, including as applicable: war; insurrection; strikes; lock-outs; riots; floods; earthquakes; fires; casualties; supernatural causes; acts of the public enemy; epidemics; quarantine restrictions; freight embargoes; lack of transportation; governmental restrictions; litigation not involving a default or other tortious or wrongful acts or omissions by the Party claiming an extension of time to perform; inclement weather; acts of the other Party; and acts or the failure to act of any other governmental entity having jurisdiction (except that any act or failure to act of or by CITY shall not excuse performance by CITY). Notwithstanding the foregoing, in no event shall OWNER's inability to secure

satisfactory financing, interest rates, or market or economic conditions entitle OWNER to an extension of time to perform.

An extension of time for any such cause shall be for the period of the enforced delay and shall commence to run from the time of the commencement of the cause, if notice by the Party claiming such extension is sent to the other Party within thirty (30) days of knowledge of the commencement of the cause. If no written notice is sent within thirty (30) days, the enforced delay shall commence to run from the date written notice is sent to the other Party. Times of performance under this Restated Agreement may be extended by mutual written agreement of CITY and OWNER. The City Manager of CITY shall have the authority on behalf of CITY to approve extensions of time not to exceed a cumulative total of one hundred eighty (180) days.

(§704) Inspection of Books and Records.

CITY shall have the right at all reasonable times to inspect the books and records of OWNER pertaining to the construction of the Project on the Property, the proper calculation of the City Financial Assistance to be paid, or with OWNER's compliance with the terms and conditions of this Restated Agreement, but only to the extent necessary and appropriate to enable CITY to enforce its rights and perform its obligations set forth in this Restated Agreement and subject to OWNER's right to redact any confidential business and customer information that is not needed to enable CITY to verify OWNER's performance of its obligations hereunder or the amount of the City Portion of Sales Tax Revenues from the Property with respect to the Payment Periods for which CITY is obligated to make City Financial Assistance payments. Prior to the Effective Date of this Restated Agreement OWNER will provide CITY with written authority from Dealership (or any authorized replacement), and from all other Tenants, authorizing CITY to access Dealership documents for the purposes and to the degree described in this section. OWNER shall also ensure that all subsequent agreements between Dealership (or OWNER) and any subsequent Tenants, include substantially similar provisions authorizing CITY to have access to that Tenant's documents as described in this Section.

(§705) Interpretation.

The terms of this Restated Agreement shall be construed in accordance with the meaning of the language used and shall not be construed for or against either Party by reason of the authorship of this Restated Agreement or any other rule of construction which might otherwise apply. The Section headings are for purposes of convenience only, and shall not be construed to limit or extend the meaning of this Restated Agreement.

(§706) Entire Agreement; Waivers and Amendments.

This Restated Agreement integrates all of the terms and conditions mentioned herein, or incidental hereto, and supersedes all negotiations and previous agreements between the Parties with respect to all or any part of the subject matter hereof. All waivers of the provisions of this Restated Agreement must be in writing and signed by the appropriate authorities of the Party to be charged, and all amendments and modifications hereto must be in writing and signed by the appropriate authorities of CITY and OWNER.

(§707) Consent; Reasonableness.

Except when this Restated Agreement specifically authorizes a Party to withhold its approval or consent in its sole discretion, when either CITY or OWNER shall require the consent or approval of the other Party in fulfilling any agreement, covenant, provision, or condition contained in this Restated Agreement, such consent or approval shall not be unreasonably withheld, conditioned, or delayed by the Party from whom such consent or approval is sought.

(§708) Severability.

If any term, provision, covenant, or condition of this Restated Agreement is held by a court of competent jurisdiction to be invalid, void, or unenforceable, the remainder of this Restated Agreement shall not be affected thereby to the extent such remaining provisions are not rendered impractical to perform taking into consideration the purposes of this Restated Agreement. In the event that all or any portion of this

Restated Agreement is found to be unenforceable, this Restated Agreement or that portion which is found to be unenforceable shall be deemed to be a statement of intention by the Parties; and the Parties further agree that in such event, and to the maximum extent permitted by law, they shall take all steps necessary to comply with such procedures or requirements as may be necessary in order to make valid this Restated Agreement or that portion which is found to be unenforceable

(§709) Third Party Beneficiaries.

Nothing herein is intended to create any third party beneficiaries to this Restated Agreement, and no person or entity other than CITY and OWNER, and the permitted successors and assigns of either of them, shall be authorized to enforce the provisions of this Restated Agreement.

(§710) Authority of Signatories to Bind Principals.

The persons executing this Restated Agreement on behalf of their respective principals represent that they have been authorized to do so and that they thereby bind the principals to the terms and conditions of this Restated Agreement.

(§711) Representations and Warranties.

OWNER and each person executing this Restated Agreement on behalf of OWNER represents and warrants that: (i) OWNER has all requisite right, power, legal capacity, and authority to enter into and perform its obligations under this Restated Agreement; (ii) any persons executing this Restated Agreement on behalf of OWNER are authorized to do so; (iii) the execution of this Restated Agreement by OWNER does not violate any provision of any other agreement to which OWNER is a party; and (iv) except as may be specifically set forth in this Restated Agreement, no approvals or consents not heretofore obtained by OWNER are necessary in connection with the execution of this Restated Agreement by OWNER or with the performance by OWNER of its obligations hereunder.

(§712) Execution.

This Restated Agreement may be executed in counterparts, each of which shall be deemed to be an original, and such counterparts shall constitute one and the same instrument.

(§713) Assignment.

Beginning on the Effective Date and continuing until the Covenant Termination Date, OWNER shall not transfer or assign its fee interest or leasehold interest in the Property, any of its rights or obligations set forth in this Restated Agreement, or any shares, membership interests, or other ownership interest in OWNER of twenty five percent (25%) or more, without first obtaining CITY's prior written approval, which approval shall not be unreasonably withheld, conditioned, or delayed, and shall be granted if the transfer or assignment is to another business intending to continue the operation of a Dealership on the Property satisfying the definition of that term in Section 200 of this Restated Agreement (with the exception of the change in ownership and control thereof). In addition, the foregoing restriction on transfers and assignments shall not apply and CITY approval shall not be required for any of the following: (i) a transfer or assignment to an entity in which OWNER or any shareholder or shareholders owning a minimum of fifty percent (50%) of the beneficial interest in OWNER as of the Effective Date individually or collectively own a minimum of fifty percent (50%) of the beneficial interest; (ii) a transfer or assignment of an ownership interest in OWNER resulting from the death or mental or physical incapacity of an individual; provided that only the ownership interest of the individual who dies or becomes mentally or physically incapacitated may be transferred without CITY approval pursuant to this clause (ii); (iii) a transfer of an ownership interest in OWNER in trust for the benefit of a family member or members, provided the trustees of the trust are the same persons as the persons who are transferring the ownership interest; (iv) a transfer of stock in a publicly traded corporation or real estate investment trust; (v) a transfer or assignment of a security interest in the Property, the City Financial Assistance payments or the right to receive same; (vi) the foreclosure or transfer or assignment in lieu of foreclosure of any security interest referred to in clause (v); or (vii) the granting of an easement, license agreement,

or similar conveyance pertaining to the Property consistent with the operation of the Dealership on the Property. In the event of a permitted transfer or assignment requiring CITY approval hereunder, or a permitted transfer under clause (i), (ii) or (vii) of the preceding sentence, and as a condition to such right of transfer and assignment, the transferor and transferee shall enter into an assignment and assumption agreement in a form reasonably approved by CITY's legal counsel that provides for the transferor's assignment and the transferee's assumption of all of the transferor's rights and obligations set forth in this Restated Agreement and the Restated Agreement Containing Covenants Affecting Real Property from and after the effective date of the transfer and assignment. Upon the effective date of said transfer and assignment, the transferor shall be released from any rights and obligations hereunder, but only with respect to transfers and assignments which either have been approved in advance by CITY, as provided herein, transfers and assignments occurring pursuant to clauses (ii)-(vii) of the second sentence of this Section 713, and transfers and assignments occurring pursuant to clause (i) of the second sentence of this Section 713 as to which CITY approves the release (which release shall not be unreasonably withheld, delayed, or conditioned). Not by way of limitation of the foregoing, after the effective date of any such transfer and assignment, CITY's payments of the City Financial Assistance shall be made to the transferee.

(§714) Estoppels.

At the request of OWNER or any existing or prospective holder of a mortgage or deed of trust encumbering OWNER's interest in the Property, CITY shall, from time to time and upon the request of OWNER or such holder, timely execute and deliver to OWNER or such holder a written statement of CITY that no default or breach exists (or would exist with the passage of time, or giving of notice, or both) by OWNER under this Restated Agreement, if such be the case, certifying as to whether or not OWNER has at the date of such certification complied with any obligation of OWNER hereunder as to which OWNER or such holder may inquire, providing reasonably detailed information regarding the nature and type of any OWNER breach or default that CITY may contend exists and the measures required to be taken by OWNER to cure or remedy such

breach or default, if such be the case, and informing OWNER and such holder of the status of City Financial Assistance payments to the extent of CITY's knowledge with respect thereto at the time such request is made. The form of the estoppel letter shall be prepared by OWNER or the holder and shall be at no cost to CITY. OWNER shall reimburse CITY for any costs reasonably incurred by CITY in connection therewith, including CITY's legal expenses, upon CITY's submittal of an invoice therefor to OWNER.

(§ 715) Indemnity – Relocation Benefits.

OWNER represents to CITY that, pursuant to the requirements of state and federal law, no relocation benefits are due or payable by CITY to any of the current or prior tenants located on the Property related to the construction of the Project or to this Restated Agreement. OWNER shall indemnify, defend, and hold CITY, its officers, officials, employees, agents and volunteers, harmless from and against any liability, loss, damage, cost, obligations or expenses (including reasonable attorneys' fees, expert witness fees, and court costs) arising from the failure or alleged failure of OWNER or CITY, or any of their respective officers, officials, employees, agents or volunteers, to pay relocation benefits as a result of the Project or as a result of this Restated Agreement.

(§ 716) Compliance with Laws.

OWNER will comply with all federal, state and local laws applicable to this Restated Agreement, to the Project work, and to the City Financial Assistance. To the fullest extent permitted by law, OWNER agrees to and shall indemnify, defend, and hold harmless CITY, its officers, officials, employees, and agents (collectively the "Indemnatee") from and against any and all claims, liabilities, injuries, damages, losses, costs, suits, expenses (including attorney's fees and court costs), and adverse determinations made by a governing court or administrative body, which are in any way related to the failure of OWNER or Indemnatee to comply with any law, rule or regulation associated with this Restated Agreement, the Project, or the City Financial Assistance payments, including but not limited to any duty to comply with Government Codes 53083 or 53084. The defense obligation provided for hereunder shall apply without any advance showing of negligence or wrongdoing by the

Indemnatee, but shall be required whenever any claim, action, complaint or suit asserts liability against the Indemnatee, related to the failure of OWNER or Indemnatee, or their respective officers, officials, employees, agents, volunteers, or subcontractors, to comply with any law, rule or regulation associated with this Restated Agreement, the Project or the City Financial Assistance payments, whether or not the OWNER is specifically named or otherwise asserted to be liable.

IN WITNESS WHEREOF, the Parties hereto have executed this Restated Agreement as of the Effective Date specified herein.

CITY OF UPLAND

By: _____
Mayor Pro Tem, Glenn Bozar

PARK PLACE FORD LLC
a California limited liability company
dba FORD OF UPLAND

By: _____

Its: _____

By: _____

Its: _____

ATTACHMENT NO. 1

LEGAL DESCRIPTIONS AND MAP OF THE PROPERTY

Assessor Parcel Number 1044-111-09

TRACT 16198-1 LOT 3 BOOK 296 PAGE 43 AND INT IN COMMON AREA

Assessor Parcel Number 1044-151-04

TRACT 16198-1 LOT 4 BOOK 296 PAGE 43 AND INT IN COMMON AREA

Assessor Parcel Number 1044-151-02

ONTARIO COLONY LANDS PTN LOT 276 BEING 200 FT WIDE BEING PARALLEL WITH AND 75 FT NWLY MEAS AT R/A FROM FOL LI COM AT PT ON LI THAT IS PARALLEL WITH AND 15 FT NLY MEAS AT R/A FROM C/L 18TH ST AS SHOWN ON TRACT NO 6422 SD PT BEING N 89 DEG 59 MIN 00 SECONDS W 46.59 FT FROM INTERSECTION SD PARALLEL LI WITH SLY PROLONGATION E LI LOT 4 SD TRACT NO 6422 SD PT BEING BEG OF TANGENT CURVE CONCAVE NWLY HAVING RAD 800 FT A RADIAL LI OF SD CURVE TO SD PT HAVING BEARING S 00 DEG 01 MIN 00 SECONDS W TH NELY ALG SD CURVE THRU CENTRAL ANGLE 34 DEG 15 MIN 45 SECONDS AN ARC DISTANCE 478.39 FT TH N 55 DEG 45 MIN 15 SECONDS E 636.61 FT TH N 62 DEG 59 MIN 48 SECONDS E 4777.23 FT TO PT ON COMMON BNDRY LOTS 10 AND 11 CUCAMONGA HOMESTEAD ASSN SD PT BEING N 89 DEG 59 MIN 55 SECONDS W 1195.10 FT FROM INTERSECTION OF ELY PROLONGATION SD COMMON BNDRY WITH C/L SAPPHIRE ST AS SHOWN ON PLAT OF CUCAMONGA HOMESTEAD ASSN TH ALG SD BNDRY AND SD LAST ELY PROLONGATION S 89 DEG 59 MIN 55 SECONDS E 1195.10 FT TO LAST MENTIONED INTERSECTION EX ST AND EX HWY

ATTACHMENT NO. 2

DESCRIPTION OF PROJECT IMPROVEMENTS

Owner will construct a new 32,607 square foot state-of-the-art automotive facility consisting of a showroom, office, parts, service, and wash tunnel along with a 4,178 square foot detached quick lane tire and auto center on 6.1 acres near the northeast corner of I-210 and Campus Avenue within the Colonies at San Antonio development. The financial investment to acquire land and construct improvements totals approximately \$9.6 million dollars.

ATTACHMENT NO. 3

RELEASE OF CONSTRUCTION COVENANTS

[See Following Page]

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Upland
8200 Upland Blvd.
Upland, California 92683
Attn: City Manager

(Space Above Line for Recorder's Use)

[Attn Recorder: Index as Partial Release
of Restated Agreement]

This Release is recorded at the request and for
the benefit of the City of Upland and is exempt
from the payment of a recording fee pursuant to
Government Code Section 6103.

CITY OF UPLAND

By: _____
Mayor, Ray Musser

Dated: _____, 2015

RELEASE OF CONSTRUCTION COVENANTS

WHEREAS, PARK PLACE FORD LLC, a California limited liability corporation ("Owner"), is
the owner of certain real property in the City of UPLAND hereinafter referred to as the
"Property", and legally described in Exhibit "A" hereto; and

WHEREAS, on September 14, 2015, the CITY OF UPLAND, a California municipal
corporation ("City"), and Owner entered into an Restated and Amended Owner
Participation Agreement (hereinafter referred to as the "Restated Agreement");

WHEREAS, pursuant to the terms of the Restated Agreement, Owner was required to
make certain improvements to the Property (the "Project Improvements").

WHEREAS, pursuant to Section 212 of the Restated Agreement, promptly after completion of all construction work to be completed by Owner on the Property, City shall furnish Owner with a Release of Construction Covenants upon written request therefore by Owner; and

WHEREAS, the issuance by City of the Release of Construction Covenants shall be conclusive evidence that Owner has complied with the terms of the Restated Agreement with respect to the development of the Project Improvements on the Property; and

WHEREAS, Owner has requested that City furnish Participant with the Release of Construction Covenants; and City has determined that the development of the Project Improvements have been satisfactorily completed as required by the Restated Agreement;

NOW, THEREFORE:

1. As provided in the Restated Agreement, City does hereby certify that development of the Project Improvements, as described in the Restated Agreement, have been fully and satisfactorily performed and completed, and that such development is in compliance with said Restated Agreement. City hereby releases Owner from the terms of the Restated Agreement that pertain to Owner's performance and completion of the Project Improvements, and as such this Release of Construction Covenants constitutes a partial release of the Restated Agreement by City in favor of Owner.

2. This Release of Construction Covenants shall not constitute evidence of compliance with or satisfaction of any obligation of Owner to any holder of a mortgage, or any insurer of a mortgage, securing money loaned to finance construction work on the Property, or any part thereof. Nothing contained herein shall modify or diminish in any way any other provision of said Restated Agreement.

3. This Release of Construction Covenants shall not constitute evidence of Owner's compliance with those covenants in the Restated Agreement that survive the issuance of this

Release.

4. This Release of Construction Covenants is not a Notice of Completion as referred to in California Civil Code Section 3093.

IN WITNESS WHEREOF, City has executed this Release as of this _____ day
of _____, 201__.

THE CITY OF UPLAND

By: _____

Mayor, Ray Musser

On behalf of Owner I hereby consent that this document be recorded against the Property,
or any other interest in the Property described herein.

PARK PLACE FORD LLC
a California limited liability company
dba FORD OF UPLAND

By: _____

Its: _____

By: _____

Its: _____

ATTACHMENT NO. 4
MEMORANDUM OF RESTATED AND AMENDED AGREEMENT

RECORDED AT THE REQUEST OF
AND WHEN RECORDED RETURN TO:

City of Upland
8200 Upland Blvd.
Upland, California 92683
Attn: City Manager

(Space Above Line for Recorder's Use)

This Restated Agreement is recorded at the request and for the benefit of the City of Upland and is exempt from the payment of a recording fee pursuant to Government Code §6103.

THE CITY OF UPLAND

By: _____
Mayor, Ray Musser

Dated: _____, 2014

AGREEMENT CONTAINING COVENANTS
AFFECTING REAL PROPERTY

THIS AGREEMENT CONTAINING COVENANTS AFFECTING REAL PROPERTY ("Restated Agreement") is executed this 14th day of September, 2015, by and between the City of Upland, a municipal corporation ("City") and PARK PLACE FORD LLC, a California limited liability corporation ("Owner"), with reference to the following:

A. Owner is in escrow to purchase certain property in the City more specifically described in Attachment 1. In addition, the Metropolitan Water District ("MWD") is the owner of certain real property identified as Assessor's Parcel Number

1044-151-02 as more specifically described in Attachment 1. Owner will enter into a lease agreement with the MWD for the use of parcel number 1044-151-02. All owned and leased properties described in Attachment 1 are referred to hereinafter as (the "Property")

C. City and Owner have entered into an Restated and Amended Owner Participation Agreement (the "OPA") dated as of September 14, 2015, concerning Owner's operation of a vehicle dealership (the "Dealership") on the Property, which OPA is incorporated herein by this reference and is a public record available for public inspection at City's offices located at 460 N. Euclid Ave., Upland, California 91786.

D. City has fee or easement interests in various streets, sidewalks, and other property within the City of Upland (the "Benefitted Public Property"), and is responsible for planning of land use within the City in such a manner as to provide for the health, safety, and welfare of the residents of the City. The Benefitted Public Property is legally described in Attachment 2, attached hereto and incorporated herein by this reference.

NOW, THEREFORE, IN CONSIDERATION OF CITY'S AGREEMENT TO PERFORM ITS OBLIGATIONS SET FORTH IN THE OPA, INCLUDING WITHOUT LIMITATION ITS PROVISION OF THE CITY FINANCIAL ASSISTANCE REFERRED TO IN ARTICLE III THEREOF, OWNER, ON ITS OWN BEHALF AND ON BEHALF OF ITS SUCCESSORS AND ASSIGNS TO THE FEE INTEREST AND LEASEHOLD INTEREST IN THE PROPERTY, AND EACH SUCCESSOR IN INTEREST TO OWNER'S FEE INTEREST OR LEASEHOLD INTEREST IN THE PROPERTY, HEREBY COVENANTS AND AGREES AS FOLLOWS:

1. The defined terms in this Agreement shall have the same meanings ascribed to those terms in the OPA. In the event of any inconsistency between the provisions set forth in this Agreement and the OPA, the provisions set forth in the OPA shall govern and control.

2. Owner's use of the Property shall be restricted to use for the operation of the Dealership, including related incidental retail, service, and repair facilities and such

other uses as may be consistent with the applicable land use regulations of City and pre-approved by City in writing, all as described in the OPA. Owner agrees to use the Property for no other purposes. Owner further covenants to (i) exercise its commercially reasonable diligence to keep the Dealership open during all normal business hours for similar businesses, subject to temporary closures in the event of casualty losses, maintenance and repairs, and events of force majeure, and (ii) exercise its best efforts to maximize long-term sales, consistent with market conditions and prudent business practices.

The use covenants and restrictions set forth in this Paragraph 2 shall terminate and be of no further force or effect upon the Covenant Termination Date as defined in Section 401 of the OPA.

In the event that Owner or any successor or assign commits a material default of any of the provisions of this Agreement or the OPA, including but not limited to any of the use covenants or restrictions set forth in this Paragraph 2 prior to the Covenant Termination Date and such default continues for a period of thirty (30) days after City has given Tenant the notice required by Section 601 of the OPA in compliance with Section 601 of the OPA, then both of the following shall apply:

(i) City shall have the right to terminate the OPA and this Agreement, in which case (a) City shall cooperate in causing this Agreement to be removed of record and (b) City shall have no obligation to make any further City Financial Assistance payments to Tenant pursuant to the OPA; and

(ii) Owner shall immediately return to City as liquidated damages the full amount of City Financial Assistance paid by City to Owner for the last Payment Period in which a payment was made from City to Owner under the OPA and the Escrow funds provided in Section 301 of the OPA.

THE PARTIES HERETO AGREE THAT THE AMOUNTS SET FORTH ABOVE CONSTITUTE A REASONABLE APPROXIMATION OF THE ACTUAL DAMAGES THAT CITY WOULD SUFFER DUE TO A DEFAULT BY OWNER OF THE USE

COVENANTS AND RESTRICTIONS SET FORTH IN THIS PARAGRAPH 2, CONSIDERING ALL OF THE CIRCUMSTANCES EXISTING ON THE EFFECTIVE DATE OF THIS AGREEMENT, INCLUDING THE RELATIONSHIP OF THE DAMAGE AMOUNTS TO THE RANGE OF HARM TO CITY AND ACCOMPLISHMENT OF CITY'S PURPOSE IN ENTERING INTO THIS AGREEMENT, THE DIFFICULTY AND IMPRACTICABILITY OF DETERMINING ACTUAL DAMAGES INVOLVING SUCH ISSUES AS THE LOSS OF PUBLIC TAX REVENUES AND THE DELAY IN IMPLEMENTATION OF THE GOALS OF THE CITY'S ECONOMIC DEVELOPMENT PLAN, AND THAT THE PROOF OF ACTUAL DAMAGES WOULD BE COSTLY OR INCONVENIENT. IN PLACING ITS INITIALS AT THE PLACES PROVIDED HEREINBELOW, EACH PARTY SPECIFICALLY CONFIRMS THE ACCURACY OF THE STATEMENTS MADE ABOVE AND THE FACT THAT EACH PARTY HAS BEEN REPRESENTED BY COUNSEL WHO HAS EXPLAINED THE CONSEQUENCES OF THIS LIQUIDATED DAMAGES PROVISION AT OR PRIOR TO THE TIME EACH EXECUTED THIS AGREEMENT.

OWNER'S INITIALS:

CITY'S INITIALS:

1. Owner covenants that from the Effective Date of the OPA until the Covenant Termination Date, Owner shall ensure that the Property, or (subject to first obtaining the prior written approval of City's City Manager, which approval may be given or withheld in the City Manager's sole and absolute discretion) another location within the City, shall be the point of sale and lease of all new and used vehicles (or, if City approves a change in dealerships, such other make of vehicles, motor homes, trailers, automobiles or trucks displayed, sold or leased from the Property) which are sold and leased within a fifteen (15) mile radius of the Property (or other approved location within the City) by or through Owner or its Tenants, or their officers and employees, subsidiaries or parent companies, and all other new or used recreational vehicles, motor homes and trailers which are displayed for sale or lease on the Property.

2. Owner shall maintain all improvements that exist on the Property from time to time in good condition and repair (and, as to landscaping, in a healthy condition)

in accordance with the standard of maintenance typical for similar businesses in the San Bernardino County region and all applicable laws, rules, ordinances, orders, and regulations of all federal, state, county, municipal, and other governmental agencies and bodies having or claiming jurisdiction and all their respective departments, bureaus, and officials. In addition, Owner shall keep the Property free from all graffiti and any accumulation of debris or waste material. Owner shall make all repairs and replacements necessary to keep the improvements in good condition and repair and shall promptly eliminate all graffiti and replace dead and diseased plants and landscaping with comparable approved materials.

In the event that Owner breaches any of the covenants contained in this Paragraph, and fails to cure such default for a period of thirty (30) days after written notice from City, or, in the event that any such cure cannot reasonably be completed within said time period(s), if Owner fails to commence such cure within said time period(s) and thereafter diligently prosecute such cure to completion, then City, in addition to whatever other remedy it may have at law or in equity, shall have the right to enter upon the Property and perform or cause to be performed all such acts and work necessary to cure the default. All of City's costs in curing the default (including a fifteen percent (15%) administrative charge) shall be immediately due and payable by Owner. Provided that City complies with the notice requirements in this Paragraph, and without limiting City's right to recover costs in any other permissible manner under applicable law, Owner agrees that City's costs to cure (including the administrative charge) may be assessed as a lien against the Property as provided for public nuisances, and in this regard Tenant waives any other public notice, hearing, and other procedures that may be provided for under public nuisance laws and ordinances that are a prerequisite to the assessment of such a lien.

The covenants set forth in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

3. Owner agrees for itself and its successors and assigns not to discriminate upon the basis of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin in the sale, lease, or rental or in the use, occupancy, or enjoyment of the Property hereby conveyed or any part thereof. Owner covenants by and for itself and its successors and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of, any person or group of persons on account of race, color, creed, national origin, ancestry, sex, sexual or gender orientation, pregnancy, disability, marital status, or religion in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the Property, nor shall Owner itself or any person claiming under or through Owner establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use or occupancy of tenants, lessees, subtenants, sub lessees, or vendees in the Property or any portion thereof. The covenants in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

4. Owner agrees for itself and any successors in interest that Owner shall refrain from restricting the rental, sale, or lease of any portion of the Property, or contracts relating to the sale, lease, transfer, use, occupancy, tenure, or enjoyment of the Property, on the basis of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin of any person. All such deeds, leases, or contracts shall contain or be subject to substantially the following nondiscrimination or nonsegregation clauses:

a. In deeds: "The grantee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through them, that there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin in the sale, lease, sublease, transfer, use, occupancy, tenure, or enjoyment of the land herein conveyed, nor shall the grantee itself , or any persons claiming under or through it, establish or

permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub lessees, or vendees in the land herein conveyed. The foregoing covenants shall run with the land."

b. In leases: "The lessee herein covenants by and for itself, its heirs, executors, administrators, and assigns, and all persons claiming under or through it, and this lease is made and accepted upon and subject to the following conditions:

"That there shall be no discrimination against or segregation of any person or group of persons on account of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, age, physical or mental disability, ancestry, or national origin in the leasing, subleasing, transferring, use, occupancy, tenure, or enjoyment of the land herein leased, nor shall the lessee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, sub lessees, subtenants, or vendees in the land herein leased.

c. In contracts: "There shall be no discrimination against or segregation of any persons or group of persons on account of race, color, creed, religion, sex, sexual or gender orientation, pregnancy, disability, marital status, ancestry, or national origin in the sale, lease, transfer, use, occupancy, tenure, or enjoyment of land, nor shall the transferee itself, or any person claiming under or through it, establish or permit any such practice or practices of discrimination or segregation with reference to the selection, location, number, use, or occupancy of tenants, lessees, subtenants, sub lessees, or vendees of land.

The covenants in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

5. To the fullest extent permitted by law, Owner covenants for itself and its successors and assigns to defend, indemnify, and hold harmless City, and its respective officers, employees, and agents (collectively, the "Indemnatee") from and against any liability, loss, damage, costs, and expenses (including attorney's fees and costs) arising from or as a result of the death or injury of any person or any accident, injury, loss, or damage whatsoever (whether or not covered by insurance) in any way related to Owner's construction of the Project, or lease and occupancy of the Property and operation of the Dealership thereon, including without limitation with respect to Owner's performance of its obligations set forth in the OPA and this Agreement to the extent such liability, loss, damage, cost, or expense is caused by or arises out of any acts, errors, or omissions of Owner or its agents, servants, or employees in operating the Dealership or construction the Project. Notwithstanding the foregoing, the foregoing indemnity and defense obligations shall not be deemed to limit or restrict City's obligations set forth in the OPA and Owner shall not be responsible for the defense or indemnification of the Indemnitees for claims, actions, complaints, or suits arising out of the sole active negligence or willful misconduct of any of the Indemnitees.

The covenants in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date unless extended by written agreement of both parties; provided, that such covenants shall continue in effect after the Covenant Termination Date with respect to any liability, loss, cost, or expense arising from an event or occurrence prior to the Covenant Termination Date. The requirements of this Paragraph shall not limit any other indemnity provisions set forth in the OPA.

6. Owner shall not, whether voluntarily, involuntarily, or by operation of law, and except as permitted in Section 713 of the OPA, assign or transfer all or any part of its obligations under this Agreement or any rights hereunder or in the Property or in any portion thereof or in the Dealership (as defined in the OPA) or any part thereof without City's prior written approval. The procedures to be followed in obtaining such approval, the criteria to be utilized by City in determining whether to grant such approval, and

certain exceptions to the foregoing prohibitions and restrictions are set forth in Section 713 of the OPA.

The restrictions set forth in this Paragraph shall commence on the Effective Date of the OPA and shall terminate and be of no further force or effect on the Covenant Termination Date.

7. The parties intend and agree that all conditions, covenants, and restrictions contained herein shall run with the Owner's fee interest in the Property and the leasehold estate created under the Lease or any other leasehold, fee, or other interest in the Property held by Owner (but not MWD) and Owner's successors or assigns, and shall, in any event, and without regard to technical classification or designation, legal or otherwise, and to the fullest extent permitted by law and equity and for the period or periods of time that such covenants remain in effect as provided herein, be binding for the benefit and in favor of, and enforceable by City and its successors and assigns against Owner and Owner's successors and assigns in and to any interest in the Property.

8. This Agreement is designed to create equitable servitudes and covenants appurtenant to the Benefitted Public Property and running with Owner's (but not MWD) interest in the Property for the period or periods of time that such covenants remain in effect as provided herein, in accordance with the provisions of Civil Code Section 1468. The covenants, conditions, restrictions, reservations, equitable servitudes, liens and charges set forth herein shall run with Owner (but not MWD's) interest in the Property and shall be binding upon Owner (but not MWD) and any successor or assignee in or to all or any portion of Owner's (but not MWD's) right, title or interest in the Property, shall inure to the benefit of City and its successors and assigns and successors in interest with fee or easement interests in the Benefitted Public Property; shall be binding upon Owner (but not MWD) and its successors and assigns; and may be enforced by City and its successors and assigns and successors in interest in and to the Benefitted Public Property. Owner hereby declares its understanding and intent that the burden of the covenants set forth herein touch and concern the land. Owner hereby further

declares its understanding and intent that the benefit of such covenants touch and concern the land by enhancing and increasing the enjoyment and use of the Benefitted Public Property by the citizens of City and by furthering the health, safety and welfare of the residents of City. City shall have the right to designate other real property as benefitted by the covenants contained herein during the term of this Agreement.

9. In amplification and not in restriction of the provisions set forth hereinabove, it is intended and agreed that City shall be deemed a beneficiary of the agreements and covenants provided herein both for and in their own right and also for the purposes of protecting the interests of the community. All covenants without regard to technical classification or designation shall be binding for the benefit of City and such covenants shall run in favor of City for the entire period during which such covenants shall be in force and effect, without regard to whether City is or remains an owner of any land or interest therein to which such covenants relate. City shall have the right, in the event of any breach of any such agreement or covenant, to exercise all the rights and remedies against Owner (but not MWD) and its successors and assigns, and to maintain any action at law or suit in equity or other proper proceedings against Owner (but not MWD) and its successors and assigns to enforce the curing of such breach of agreement or covenant.

10. Except as provided herein, the covenants and restrictions contained in this Agreement shall not benefit nor be enforceable by any owner of any other real property or any person or entity having any interest in any such other real property.

11. The covenants contained in this Agreement shall be construed as covenants running with the land and not as conditions which might result in forfeiture of title.

[END – SIGNATURE PAGE FOLLOWS]

IN WITNESS WHEREOF, City and Owner have caused this instrument to be executed on their behalf by their respective officers or agents herein duly authorized as of the date first written above.

CITY OF UPLAND, a municipal
corporation

By:_____

Mayor Pro Tem, Glenn Bozar

OWNER

PARK PLACE FORD LLC
a California limited liability company
dba FORD OF UPLAND

By:_____

Its:_____

By:_____

Its:_____

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On _____, before me, _____
personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacities), and that by his/her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]

STATE OF CALIFORNIA)
) ss.
COUNTY OF SAN BERNARDINO)

On _____, before me, _____
personally appeared _____,
personally known to me (or proved to me on the basis of satisfactory evidence) to be
the person(s) whose name(s) is/are subscribed to the within instrument and
acknowledged to me that he/she/they executed the same in his/her/their authorized
capacities), and that by his/her/their signature(s) on the instrument the person(s) or the
entity upon behalf of which the person(s) acted, executed the instrument.

Witness my hand and official seal.

Notary Public

[SEAL]